

#### § 1012.4

#### 49 CFR Ch. X (10–1–04 Edition)

is the subject of a meeting determines, by recorded vote, that Board business requires that a meeting be called on less than one week's notice, the meeting may be called on short notice, and public notice will be posted and published at the earliest practicable time.

(f) Changes in the scheduling of a meeting which has been the subject of a public notice will also be made the subject of a public notice, which will be posted at the earliest practicable time. Changes in, or additions to a conference agenda or in the open or closed status of a meeting will be made only if a majority of the Board Members eligible to participate in the conduct or disposition of the matter which is the subject of the meeting determines, by recorded vote, that the Board's business requires such change and that no earlier announcement of the change was possible. In such a case, the public notice of the change, will show the vote of each Board Member on the change.

[42 FR 13796, Mar. 11, 1977, as amended at 64 FR 53267, Oct. 1, 1999]

##### **§ 1012.4 Public participation.**

(a) In the case of Board or Division conferences or meetings of committees of the public, members of the public will be admitted as observers only. Active participation, as by asking questions or attempting to participate in the discussion, will not be permitted, and anyone violating this proscription may be required to leave the meeting by the presiding officer.

(b) Oral arguments are always open to the public. The scheduling of participants in the arguments and the allotment of time is governed by 49 CFR part 1116.

[42 FR 13796, Mar. 11, 1977, as amended at 47 FR 49596 and 49597, Nov. 1, 1982; 47 FR 54083, Dec. 1, 1982; 47 FR 55686, Dec. 13, 1982; 57 FR 44135, Sept. 24, 1992]

##### **§ 1012.5 Transcripts; minutes.**

(a) A verbatim transcript, sound recording or minutes will be made of all meetings closed to the public under these regulation, and will be retained by the Board for two years following the date upon which the meeting ended, or until one year after the conclusion of any proceeding with respect

to which the meeting was held, whichever occurs later. In the case of meetings closed to the public under § 1012.7(d) (1) through (7) and (9) of this part, a transcript or recording rather than minutes will be made and retained.

(b) The Board will make available free of charge, upon request, in a public reading room or some other easily accessible place, the minutes, transcript or recording of all portions of any meeting which was closed to the public except those portions which it finds to be properly exempt from disclosure under the Act. A copy of such minutes, transcript or recording will be provided, upon request, upon payment of fees as provided in part 1002 of this chapter.

(c) In the case of all meetings closed to the public, the presiding officer shall cause to be made, and the Board shall retain, a statement setting forth:

(1) The date, time, and place of the meeting.

(2) The names and affiliations of those attending.

(3) The subject matter.

(4) The action taken.

(5) A copy of the certification issued by the General Counsel that, in his or her opinion, the meeting was one that might properly be closed to the public.

##### **§ 1012.6 Petitions seeking to open or close a meeting.**

(a) The Board will entertain petitions requesting either the opening of a meeting proposed to be closed to the public or the closing of a meeting proposed to be open to the public. In the case of a meeting of the Board, the original and 15 copies of such a petition shall be filed, and in the case of a meeting of a Division or committee of the Board, an original and five copies shall be filed.

(b) A petition to open a meeting proposed to be closed, filed by any interested person, will be entertained.

(c) A petition to close a meeting proposed to be open will be entertained only in cases in which the subject at the meeting would:

(1) Involve accusing a person of a crime or formally censuring a person.

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(2) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(3) Disclose trade secrets or commercial or financial information obtained on a privileged or confidential basis.

(4) Disclose investigatory records or information, compiled for law enforcement purposes, to the extent that the production of such records or information would (i) interfere with enforcement proceedings being conducted or under consideration by an agency other than the Board; (ii) deprive a person of a right to a fair trial or an impartial adjudication; (iii) constitute an unwarranted invasion of personal privacy; (iv) disclose the identity of a confidential investigation agency or a national security intelligence agency; (v) disclose investigative techniques and procedures of an agency other than the Board; or (vi) endanger the life or physical safety of law enforcement personnel.

(5) Disclose information the premature disclosure of which could lead to significant financial speculation in securities.

(d) Every effort will be made to dispose of petitions to open or close a meeting in advance of the meeting date. However, if such a petition is received less than three working days prior to the date of the meeting, it may be disposed of as the first order of business at the meeting, in which case the decision will be communicated to the petitioner orally through the Board's Public Information Officer or other spokesperson.

### **§ 1012.7 Meetings which may be closed to the public.**

(a) A meeting may be closed pursuant to this section only if a majority of the Board Members eligible to participate in the conduct or disposition of the matter which is the subject of the meeting votes to close the meeting.

(b) A single vote may be taken to close a series of meetings on the same particular matters held within 30 days of the initial meeting in the series.

(c) With respect to any meeting closed to the public under this section, the General Counsel of the Board will issue his or her certification that, in

his opinion, the meeting is one which may properly be closed pursuant to one or more of the provisions of paragraph (d) of this section.

(d) Meetings or portions of meetings may be closed to the public if the meeting or portion thereof is likely to:

(1) Disclose matters (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order.

(2) Relate solely to the internal personnel rules and practices of the Board.

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552); *Provided*, That such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets or commercial information obtained from a person and privileged or confidential.

(5) Involve accusing any person of a crime, or formally censuring any person.

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and (in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation) disclose confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.